

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|                               |   |              |
|-------------------------------|---|--------------|
| AMERICANANGLIAN ENVIRONMENTAL | : | CIVIL ACTION |
| TECHNOLOGIES, L.P., a         | : |              |
| subsidiary of AMERICAN WATER  | : |              |
| SERVICES, INC.                | : |              |
|                               | : |              |
| v.                            | : |              |
|                               | : |              |
| THE CITY OF SCRANTON,         | : |              |
| PENNSYLVANIA, et al.          | : | NO. 05-6000  |

MEMORANDUM

Bartle, C.J.

May 4th, 2006

This is an action to confirm an arbitration award. Petitioner AmericanAnglian Environmental Technologies, L.P. ("AmericanAnglian"), and respondents the City of Scranton, Pennsylvania and the Borough of Dunmore, Pennsylvania were parties to an agreement (the "Agreement") whereby AmericanAnglian would manage, operate, and maintain respondents' sewer system. At the expiration of the Agreement, a dispute arose concerning whether AmericanAnglian was entitled to receive a termination fee. Pursuant to the Agreement, the parties submitted their dispute to arbitration, which took place in Philadelphia from October 17, 2005 through October 20, 2005. On November 12, 2005, the arbitrator, Donald E. Ziegler, found in AmericanAnglian's favor. He awarded it \$5,515,073 against the City of Scranton,

and \$1,113,134 against the Borough of Dunmore, plus interest from the date of his order.<sup>1</sup>

AmericanAnglian seeks confirmation of the award pursuant to the Federal Arbitration Act, 9 U.S.C. § 9. Respondents, in turn, have moved to vacate the award on the grounds that (1) the arbitrator manifestly disregarded the Agreement and contract law and (2) certain of his findings were not supported by the record.<sup>2</sup> Our review of an arbitrator's award is "exceedingly narrow." Tanoma Mining Co., Inc. v. Local Union No. 1269, United Mine Workers of America, 896 F.2d 745, 748 (3d Cir. 1990).

Respondents maintain that the arbitrator ignored the plain terms of the Agreement and principles of contract law when he found that an ambiguity existed and allowed the admission of extrinsic evidence of the parties' intent that AmericanAnglian would receive a termination fee. We may not overrule an arbitrator simply because we may have construed a contract differently. News America Publ'ns, Inc. Daily Racing Form Div. v. Newark Typographical Union, Local 103, 918 F.2d 21, 24 (3d Cir. 1990). Nor may we overturn the ruling based on a mere error

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1. The Agreement is governed by Pennsylvania law, which provides for prejudgment interest as a matter of right in breach of contract cases, to be calculated as simple interest at a rate of 6 percent per year. 42 PA. STAT. § 202; Fernandez v. Levin, 548 A.2d 1191, 1193 (Pa. 1988); McDermott v. Party City Corp., 11 F. Supp. 2d 612, 632 (E.D. Pa. 1998).

2. Initially, respondents also attacked the award on the ground that it was procured by undue means. See 9 U.S.C. § 10. They have since withdrawn this argument.

of law. Tanoma, 896 F.2d at 749. Rather, to be vacated, his decision must demonstrate a "manifest disregard" of the contract or the law. Pennsylvania Power Co. v. Local Union No. 272 of the Int'l Bhd. of Elec. Workers, 276 F.3d 174, 178-79 (3d Cir. 2001).

In his opinion, the arbitrator considered the terms of the Agreement and principles of contract law when he allowed the admission of extrinsic evidence. He identified numerous conflicting terms within the Agreement which he deemed to create an ambiguity. It is not for us to second-guess his construction of the Agreement, News America, 918 F.2d at 24, and he clearly did not ignore well-settled legal principles. See Tanoma, 896 F.2d at 749; Jeffrey M. Brown Assoc., Inc. v. Allstar Drywall & Acoustics, Inc., 195 F. Supp. 2d 681. 684-85 (E.D. Pa. 2002).

The Borough of Dunmore next argues that the arbitrator's finding that it intended and agreed to pay AmericanAnglian a termination fee is not supported by the record. It contends that it was not aware of and did not receive two financial term sheets created prior to the Agreement and considered by the arbitrator.

The arbitrator heard testimony of AmericanAnglian's witnesses that the Borough of Dunmore received these documents and the arbitrator obviously found these witnesses to be credible. Moreover, the arbitrator relied upon evidence in addition to the two financial term sheets in dispute. The arbitrator considered drafts of the Agreement, a Letter of Intent, and the Borough of Dunmore's conduct after the Agreement

was signed in determining that the Borough intended and agreed to pay AmericanAnglian a termination fee at the expiration of the Agreement. When reviewing an arbitrator's findings we do not make a determination as to whether the findings are supported by the weight of the evidence. Tanoma, 896 F.2d at 748. All that is required to uphold an arbitrator's factual findings is "some support in the record." Id. That standard has been met here.

Accordingly, the motion of AmericanAnglian to confirm the arbitration award will be granted, and judgment will be entered in its favor in the amount of \$5,515,073 against the City of Scranton and \$1,113,134 against the Borough of Dunmore, plus interest. The motion of respondents to vacate the arbitration award will be denied.

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ORDER

AND NOW, this 4th day of May, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of petitioner AmericanAnglian Environmental Technologies, L.P. to confirm arbitration award is GRANTED;

(2) judgment is entered in favor of petitioner AmericanAnglian Environmental Technologies, L.P. and against respondent the City of Scranton, Pennsylvania, in the amount of \$5,515,073 plus prejudgment interest to be calculated as simple interest at a rate of six percent per year from November 12, 2005;

(3) judgment is entered in favor of petitioner AmericanAnglian Environmental Technologies, L.P. and against respondent the Borough of Dunmore, Pennsylvania, in the amount of \$1,113,134 plus prejudgment interest to be calculated as simple

interest at a rate of six percent per year from November 12, 2005; and

(4) the motion of respondents the City of Scranton, Pennsylvania and the Borough of Dunmore, Pennsylvania to vacate arbitration award is DENIED.

BY THE COURT:

/s/ Harvey Bartle, III  
C.J.